

Federal Court



Cour fédérale

Date: 20200316

Docket: IMM-4406-19

Citation: 2020 FC 382

Ottawa, Ontario, March 16, 2020

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Applicant

and

HAMZA JOGEZAI

Respondent

JUDGMENT AND REASONS

[1] This application is brought by the Minister of Citizenship and Immigration [Minister] seeking to set aside a decision of the Immigration Appeal Division of the Immigration and Refugee Board of Canada [IAD].

[2] The IAD's decision allowed an appeal by Hamza Jomezai from the refusal of a family class visa to his Pakistani spouse [the applicant] based on a finding by a visa officer that the

marriage was not genuine. The Minister contends that the IAD's decision was unreasonable because it was founded on erroneous findings of fact concerning validity of the Pakistani marriage certificate (a Nikkah Namah). According to the Minister the marriage documents contained, on their face, several material inconsistencies and were obviously fraudulent. The Minister argues that the authenticity of the marriage documents was critically important to the determination of the genuineness of the marriage and that the IAD's reasons for excusing the obvious inconsistencies were neither cogent nor intelligible.

[3] There is no question that there were problems with the marriage documents that caused the visa officer to conclude that the marriage was not genuine. The question before the Court is whether the IAD'S rationale for pardoning those problems was reasonable: see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125, [2019] SCJ No 65 (QL).

[4] The Minister's concern arose out of the following issues:

- a) The two "original" copies of the marriage certificate presented by the parties were in different handwriting and only one contained an attestation stamp.
- b) The marriage certificate was not registered in the place where the bride resided.
- c) When enquiries were initially made with the Registrar at the place of alleged registration, no record of the marriage could be found.
- d) When the parties did produce a verification of registration, it incorrectly identified the Imam who had solemnized the marriage.
- e) Neither copy of the marriage certificate contained an expected serial number.

[5] The IAD addressed and excused all of the above issues largely on the strength of its credibility assessment. It described the parties as “forthright and forthcoming” and “wholly credible”. Thus, the IAD began its assessment of the documentary record by accepting their explanations for what seemed, at face value, to be irregularities.

[6] The Minister places great significance on the content of a CBSA Anti-Fraud Verification Report [CBSA Verification Report] that identified all of the problems that concern the Minister. Indeed, the Minister argues that the CBSA Verification Report “found the Nikkah Nama to be fraudulent”. On the strength of the same report, the visa officer concluded that the marriage certificate was “forged”. The Minister argues that it was unreasonable for the IAD to have come to a more benign view.

[7] The fundamental weakness to the Minister’s argument is that the CBSA Verification Report did not conclude that the marriage documents were forged or fraudulent. Its conclusion was only that there were authenticity “concerns” based on equally inconclusive observations.

[8] The CBSA Verification Report stated that it was “normal practice” to register a marriage certificate in the bride’s place of residence. It did not say that registration could not be made elsewhere. The placement of a serial number on the marriage certificate was said to be the usual practice but nothing further was said about the significance of this issue. The Report similarly noted that a copy of the marriage registration was not initially located by Registrar and that it was “unusual and questionable” that the two presented copies of the certificate were in different

handwriting. Contrary to the Minister's arguments and the visa officer's conclusions, these observations are a long way from proof of a fraud or forgery.

[9] The IAD, on the other hand, did not place undue importance on the CBSA Verification Report. Instead, it listened to and accepted the explanations provided by the parties about the marriage documents and found them to be genuine.

[10] The IAD discounted the significance of the evidentiary discrepancy concerning the identity of the officiating Imam on the strength of the evidence given by the appellant's sister identifying the officiating Imam as Ameer Mohammad and the Registrar as Azziz Ullah. The sister's testimony was accepted as credible and given against interest; the documentary inconsistency was, accordingly, attributed to simple error. This finding involved the weighing of evidence in a context where the IAD had the advantage of hearing the witnesses. It cannot be disturbed on judicial review.

[11] The IAD dealt with the issue of the different handwriting on the two otherwise identical marriage certificates in the following detailed way:

It does not take a close reading of the two documents to see that they are indeed written in two different hands. As the Verification Report explains, four copies are made of all *Nikkah Namas* and they are usually completed by one person. It is not for me to speculate as to why an imam, in a region of Balochistan, where photocopyers may be scarce on the ground, would delegate the writing of the third or fourth manuscript *Nikkah Nama* to another person. However here, when examining the two manuscript of the *Nikkah Nama*, four things become clear: 1) the same witnesses have signed both manuscript copies – the signatures on one manuscript *Nikkah* are not copied from the other, they are each individual signatures of separate documents; each signature has its

own idiosyncrasy; 2) both manuscripts are dated April 20, 2013; 3) the two manuscripts are identical in their content; and 4) the signature of Imam Ameer Mohammad appears distinctly on both manuscript *Nikkah Namas*. How do we know what the signature of Imam Ameer Muhammad looks like? It can be found on the contemporaneous English Translation and Marriage Certificate found at page 68 of the Record on the lower right-hand corner under “Signature of the person who Solemnized the marriage”. This same signature, in Arabic, appears on both the second page of the manuscript *Nikkah Nama* found on page 70 of the Record (third signature form the bottom, left side) and on the second page of the manuscript *Nikkah Nama* at page 15 of exhibit A-2. The only difference is that the *Nikkah Nama* manuscript on page 16 of exhibit A-2 provides the back of page 2 which holds an attestation stamp; the manuscript on page 70 does not include the back of page 2 and so we do not know if it had an attestation stamp on it or not. I find, therefore, that although the two manuscript *Nikkah Namas* are indeed written in two different hands, they are equally valid as they are contemporaneously signed both by witnesses, who signatures are consistent on both copies, and by the imam who solemnized the marriage, Ameer Muhammed, whose signature is also consistent on both copies and are thus a positive factor in assessing the genuineness of this marriage.

[12] The above analysis of the evidence is unimpeachable and it, too, cannot be impugned on judicial review.

[13] The IAD dismissed the Minister’s concern about the place of registration of the marriage certificate based on its acceptance of the testimony of the applicant, the appellant and the appellant’s sister that marriages cannot be registered in the location of the applicant’s residence. It was not unreasonable to accept this evidence in the face of the less than convincing statement in the CBSA Verification Report that this was not a “normal practice”. Even if the marriage certificate could have been registered at the applicant’s place of residence, no reasonable suspicion arises from the bare fact that it was registered in another permissible location. The Minister’s concern about this issue was, as the IAD held, unfounded.

[14] The IAD dealt with the absence of a serial number on the marriage certificate by accepting the possibility that the number could have been affixed to one of the other two copies not presented in evidence. This was not an unreasonable inference.

[15] The IAD dealt only indirectly with the issue of the initial inability of the Registrar to locate the marriage registration. It is implicit at least that the IAD accepted the applicant's testimony that the registration had been perfected, albeit after a lengthy delay.

[16] The Minister's arguments about the authenticity of documents are no more than an invitation to the Court to reweigh the evidence. As the Minister is well aware, that is not the role of the Court on judicial review. The IAD had a sound basis for accepting the testimony of the witnesses over the vague and inconclusive musings contained in the CBSA Verification Report. Documentary practices in many places of the world do not mirror those that are common here – a fact that the CBSA and the visa officer apparently failed to take into account.

[17] The Minister also complains that, despite finding the marriage to be genuine, the IAD failed to conduct an assessment of whether the marriage had been entered into primarily for an immigration purpose. While it is technically correct that these are disjunctive considerations, they are almost always factually linked. Where a marriage is genuine, it will be a rare situation where it can also be said to be entered into primarily for an immigration purpose.

[18] That said, it is very clear that the IAD carefully examined the evidence of the parties' motives and conduct and, in at least four places in the decision, it found the marriage not to have

been entered into primarily for an immigration purpose: see IAD decision at paras 27, 29, 31 and 34. This argument has no merit.

[19] For the foregoing reasons, this application is dismissed.

[20] Neither party proposed a certified question and no issue of general importance arises on this record.

JUDGMENT in IMM-4406-19

THIS COURT'S JUDGMENT is that this application is dismissed.

"R.L. Barnes"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4406-19

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APPEARANCES:

Laoura Christodoulides

FOR THE APPLICANT

Edward Corrigan

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE APPLICANT

Ed Corrigan Law
Barristers and Solicitors
London, Ontario

FOR THE RESPONDENT